

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VOLKER BENZ, HANS LORENZ,
MICHAEL MEIER-KAISER, MICHAEL MUELLER,
and KLAUS-ERNST POEHLMANN

Appeal No. 1998-0269
Application No. 08/396,645

HEARD: Feb. 21, 2001

Before GARRIS, TIMM, and PAWLIKOWSKI, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal which involves claims 11 through 15. The only other claim remaining in the application, which is claim 10, stands withdrawn from further consideration by the examiner.

Appeal No. 1998-0269
Application No. 08/396,645

The subject matter on appeal relates to a method for producing a multilayer plastic composite that includes a sequence of alternating layers of two incompatible thermoplastic plastics, A and B, wherein a layer of plastic B is discontinuous at regular intervals to form gaps and wherein these gaps are filled with plastic A. The details of this method are readily apparent from a review of illustrative independent claim 11 which is the sole independent claim before us. A copy of this claim taken from the appellants' brief is appended to this decision.

The references relied upon by the examiner in the rejections before us are:

Chisholm et al. (Chisholm)	3,557,265	Jan. 19,
1971		
Schrenk et al. (Schrenk)	5,202,074	Apr.
13, 1993		

Claim 11 is rejected under 35 U.S.C. § 102(b) as being anticipated by or alternatively under 35 U.S.C. § 103 as being obvious over Schrenk.

Claims 11 through 15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Chisholm.

We refer to the brief and reply brief and to the answer for a complete exposition of the opposing viewpoints expressed

Appeal No. 1998-0269
Application No. 08/396,645

by the appellants and by the examiner concerning the above noted rejections.

OPINION

These rejections cannot be sustained.

As correctly pointed out by the appellants, Schrenk contains no teaching or suggestion of the here claimed method steps for producing the previously described composite. More specifically, we have studied this reference with particular attention devoted to the specific portions of patentee's disclosure referred to in the examiner's answer but find therein no teaching or even suggestion of the here claimed method whereby a composite is formed of alternating layers of incompatible plastics in which a layer of one plastic is discontinuous at regular intervals to form gaps that are filled with the other plastic. On the contrary, the method of Schrenk is explicitly disclosed as forming layers that are continuous and uniform (e.g., see the paragraph bridging columns 4 and 5).

Various comments made in the answer suggest that the examiner may believe it is appropriate to ignore certain

Appeal No. 1998-0269
Application No. 08/396,645

recitations in the appealed claims and to focus upon only the "manipulative steps" recited in these claims. For example, the examiner states "it has been long held that to be entitled to weight in method claims, the recited structural limitations, i.e., shape of particular structured device, must affect the method in a manipulative sense, and not amount to the mere claiming of a use of such a particular structure as is the instant case" (answer, page 4). However, we do not perceive any recitation in the appealed claims which may be properly ignored, and the examiner points to none specifically. Moreover, from our perspective, it is precisely the method steps recited in appealed claim 11 which Schrenk does not teach and would not have suggested.

In light of the foregoing, we cannot sustain the examiner's section 102/section 103 rejection of claim 11 based on the Schrenk reference.

The Chisholm reference also fails to anticipate the method defined by appealed claim 11 for reasons analogous to those set forth above with respect to the Schrenk reference. That is, Chisholm simply does not disclose a method which includes the steps recited in and required by this claim. It

Appeal No. 1998-0269
Application No. 08/396,645

follows that we also cannot sustain the examiner's section 102 rejection of claims 11 through 15 based on the Chisholm reference.

Appeal No. 1998-0269
Application No. 08/396,645

The decision of the examiner is reversed.

REVERSED

	Bradley R. Garris)	
	Administrative Patent Judge)	
)	
)	
)	
	Catherine Timm)	BOARD OF
PATENT			
	Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
	Beverly A. Pawlikowski)	
	Administrative Patent Judge)	

MEC:tdl

Appeal No. 1998-0269
Application No. 08/396,645

Oblon, Spivak, McClelland,
Maier and Neustadt
1755 Jefferson Davis Highway
Fourth Floor
Arlington, VA 22202

APPENDIX

11. A method for producing a multilayer plastic composite,

said composite comprising a sequence of layers of at least two incompatible thermoplastic plastics, A and B, wherein said sequence of layers alternates between A and B, a layer of plastic B is discontinuous at regular intervals to form gaps in said layer of plastic B, and said gaps in said layer of B are filled in with plastic A;

said method comprising coextruding plastic A and plastic B through a die comprising a pair of parallel exit slits and a plurality of exit ports, with a gap between each port, located between said pair of parallel exit slits, said plurality of exit ports being evenly spaced along a line parallel to said pair of exit slits,

wherein said coextruding plastic A and plastic B comprises forming a pair of fluid streams of said plastic A by passing a fluid stream of plastic A through said pair of parallel exit slits and forming a plurality of fluid streams of plastic B with gaps between each stream of said plastic B by passing a fluid stream of plastic B through said plurality of exit ports, so that said fluid streams of said plastic A exit said pair of exit slits and said fluid streams of plastic B exit said plurality of exit ports in such a manner to result in a portion of said fluid streams of said plastic A passing through said gaps between each stream of said plastic B to effect fusion of said pair of fluid streams of said plastic A, to obtain said composite.